

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

DARROW BERNARD PAYNE-BEY,

Plaintiff,

V.

C. M. WALKER, *et al.*,

Defendants.

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Case No. 2:11-cv-01158-RBP-RRR

MEMORANDUM OF OPINION

The magistrate judge filed a report on July 13, 2011, recommending that this action be dismissed for failing to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1). The plaintiff filed objections to the report and recommendation on July 29, 2011. He contends that being deprived of a mattress for over nineteen hours constituted an unquestioned and serious deprivation of his basic human needs. However, his objections are without merit. The magistrate judge properly recognized that it is only extreme deprivations which constitute cruel and unusual punishment under the Eighth Amendment, and that the plaintiff has failed to allege conditions which meet this strict criteria. *Chandler v. Crosby*, 379 F.3d 1278, 1298 (11th Cir. 2004). Additionally, the short duration of the conditions alleged in the complaint further shows that the defendants' actions

do not warrant constitutional scrutiny.¹ See *Hutto v. Finney*, 437 U.S. 678, 686-87 (1978).² Finally, the plaintiff has not adequately shown how the defendants were subjectively aware of an *excessive* risk to his health or safety and therefore how any of them acted with a “sufficiently culpable state of mind.” *Chandler*, supra.

Accordingly, having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and the objections thereto, the Court is of the opinion that the magistrate judge's report is due to be and hereby is ADOPTED and the recommendation is ACCEPTED. This action is therefore due to be dismissed without prejudice for failing to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1). A Final Judgment will be entered.

Filed in conjunction with the plaintiff's objections is his “Motion to Subpoena Medical Records.” (Doc. #11). The motion is due to be and hereby is **DENIED**.

DATED this 10th day of August, 2011.



ROBERT B. PROPST
SENIOR UNITED STATES DISTRICT JUDGE

¹ The plaintiff has alleged that he was denied a mattress for one night. However, he admits that he slept a large part of that time, albeit on a bare bed, waking only once during the period from approximately 8:30 p.m. to 7 a.m. (Doc. #1, pp. 3 and 5).

² By way of illustration, the Court in *Hutto* explained that “[a] filthy overcrowded cell and a diet of ‘grue’ might be tolerable for a few days and intolerably cruel for weeks or months.”